THE HONOURABLE SRI JUSTICE T.CH. SURYA RAO
AND
THE HONOURABLE SRI JUSTICE G. CHANDRAIAH

W.P. No.19504 of 2002

ORDER: (Per Hon'ble Sri Justice T.CH. Surya Rao)

The instant writ petition is directed against the order dated 04-02-2002 passed by the learned Special Court under the A.P. Land Grabbing (Prohibition) Act, 1982 (For short "the Act") in L.G.C. No.53 of 1997 and the subsequent order passed in the review application 528 of 2002 on 16-08-2002.

The writ petitioner and another filed an application under Section 8 of the Act against the respondents 3 to 54 herein seeking their eviction on the premise that they grabbed the land of the applicants. It was their case *inter alia* in the application that the land in dispute admeasuring 5000 square yards covered by Survey No.297/1/1, 297/2/1 and 298/1 situate at Gudimalkapur village of Golconda Mandal was originally owned by the 1st applicant and his family members as pattaddars thereof along with other lands admeasuring Acs.42-17 guntas. They wanted to dispose of a part of the land measuring Acs.25-00 from out of the total extent of land.

The 2nd applicant, Society, entered into an agreement for purchasing Acs.25-00 of land from the 1st applicant for the benefit of its members for the purpose of constructing dwelling houses. Accordingly, they entered into an agreement in the year 1981-82 where under the 2nd applicant society paid an amount of Rs.1,60,000/- to the 1st applicant. There was a subsequent agreement in between the parties under which an amount of

Rs.75,000/- was paid to the 1st applicant by the 2nd applicant. The land accordingly was delivered by the 1st applicant in favour of the 2nd applicant. The members of the 2nd applicant society are all Government employees. However, in the meanwhile, respondent 3 to 54 unauthorisedly occupied the land in dispute taking undue advantage of the 2nd applicant society's royalty. The society therefore filed a suit in O.S. No.2395 of 1996 seeking relief of perpetual injunction on the file of the IX Assistant Judge, City Civil Court, Hyderabad against some of the land grabbers, which was eventually decreed. However, the unscrupulous grabbers are increasing day by day by erecting huts thereby putting the 2nd applicant society in confusion and chaos, hence, the application.

That application was resisted by the 6th respondent by filing counter that was adopted by the other respondents.

The plea *inter alia* in the counter seems to be that they have settled down on the land in dispute long back to the knowledge of every one and therefore they perfected their title by means of adverse possession by virtue of their possession for more than 20 years.

On the above pleadings, the Special Court framed the following issues.

> "1. Whether the applicants have title to in the application schedule property?
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> 2. Whether the contesting respondents have perfected their title by adverse possession?
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> 3. Whether the application schedule property vested in the State under the provisions

of Act 33 of 1976 and if so whether the application is maintainable?

4. To what relief?"

At the time of enquiry, on the side of applicants, P.Ws.1 and 2 were examined and Exs.A-1 to A-10 were got marked. On the side of the respondents, R.Ws.1 to 10 were examined and Exs.B-1 to B-34 were got marked.

Appreciating the evidence thus adduced, the learned Special Court was of the view that both the applicants failed to prove their title over the land in dispute. Inasmuch as,

the 1st applicant was held to be in possession of surplus land by the authority under the Urban Land Ceiling Act (for short

"the Ceiling Act"). As the 1st applicant failed to prove that he surrendered the land, which was held to be in excess, pursuant to the order of the authority, and therefore the land in question was not his land and it stood vested in the Government, consequently the learned Special Court dismissed the application filed by the applicants.

Undisputedly, the land in dispute along with other lands total admeasuring Acs.42-17 guntas was owned by the

1st applicant and his family members. Having regard to the law that was in vogue by then, it was considered that the

1st applicant and his family members were not entitled to any exemption from the provisions of the Ceiling Act. Therefore, the

1st applicant filed a petition before this Court in

W.P. No.18184 of 1994. Initially, *status quo* was granted in favour of the writ petitioners by this Court and that writ petition was disposed of placing reliance upon the judgment of the Apex Court

in ***ATIA MOHAMMADI BEGUM v. STATE OF U.P.***[1]***.*** There has been a change in the law, inasmuch as, the Apex Court reviewed its judgment later. In terms thereof,

writ appeal was disposed of on 14-02-2002. In view of the judgment of this Court in writ appeal No.1497 of 1996, the applicant filed a review application before the special Court in R.A. No.528 of 2002 under the impugned order dated 16-08-2002. The learned Special Court having been of the view that the subsequent judgment need not be taken into consideration inasmuch as, the order was rendered by it earlier in terms of the law then declared by the Apex Court and was in vogue by then. As aforesaid, the applicants are now assailing both the orders.

In W.A. No.1497 of 1996 this Court by allowing the appeals partly held while setting aside the order passed by the learned single judge in the writ petition and the order passed by the learned Special Officer under section 8(4) as well that "the Special Officer and Competent Authority shall decide the matters afresh and compute the holdings with reference to the date on which the lands became vacant, as indicated" *inter alia* in the judgment and the applicants are entitled to submit their claim before the Special Officer and the Special Officer shall having regard to exemption under G.O. Ms. No.733 dated 31-10-1988 and the rights of the Cooperative Housing Societies under Section 19 of the Act shall decide the matter as expeditiously as possible. Pursuant to those directions and in view of the subsequent order of the Apex Court reviewing its earlier judgment, the applicants approached the Special Officer by submitting the necessary declarations under the provisions of the Ceiling Act.

Sri M.R.K. Choudary, learned senior counsel brought to the

notice of this Court, the order passed by the Government in G.O. Ms. No.552 dated 30-04-2005 wherein the Government in relaxation of its orders issued earlier and G.O. Ms. No.455 Revenue (UC.I) Department dated 29-07-2002 directed the society to submit its records showing the allotment of plots made to its members and the extents thereof and other details and the case of the individual members of the society.

Basing on the strength of the allotment order by filing individual applications shall be considered by the authorities for allotment of such plots in favour of such members in terms of Government order referred to *inter alia* in the said order.

But unfortunately it appears that the Special Court has taken the view that subsequent events cannot be taken note of and application shall have to be disposed of as per the law prevailing as on the date of the application and passed the orders. The stand thus taken by the learned Special Court appears to be illegal. As a matter of fact, the Tribunals shall not shut its eyes to the events that transpire even subsequent to the adjudication of the matters before it. The relief to be given to the party shall always be moulded accordingly and in tune with the change in the law as otherwise it would result in travesty of justice. Having regard to the clear change in the position of law and subsequent Government order issued in G.O. Ms. No.552 dated 30-04-2005 and the clear directions given by this Court in W.A. No.1497 of 1996 it is not reasonably correct to say that the applicants have no title to the land in dispute. It may be mentioned here that the contesting respondents who are respondents 3 to 54 have not set up any independent title in themselves. Their plea as taken *inter alia* in the counter seems to be that they occupied the lands settled down there for the lost more than 20 years to the

knowledge of one and all and thereby they perfected the title by means of adverse possession. They never disputed the title of the applicants. It is only having regard to the facts that the land in dispute was measuring Acs.25-00 and it was part of the land held by the 1st applicant admeasuring Acs.42-17 guntas and therefore it would definitely attract the provisions of the Ceiling Act, the Special Court seemed to have taken the view that due to absence of any evidence showing that the

1st applicant surrendered the land to the State the inescapable conclusion shall be that the land stood vested in the State. That decision of the Special Court appears to be not correct. In view of the judgment of this Court in writ appeal referred to hereinabove and even the subsequent Government order issued by the State for relaxation the extent of land allotted by the 2nd applicant in favour of the society and its members. These changes shall not be ignored by all concerned. In that view of the matter, the orders now being impugned are liable to be set aside.

Respondents 3 to 54 having been served, have not chosen to appear before this Court, any way, still their plea shall have to be adverted to by the Special Court and in that view of the matter, the matter requires to be remitted to the Special Court for fresh disposal in accordance with law and in the light of the observations made by this Court *inter alia* in the order.

In the result, the Writ Petition is allowed and the impugned orders are hereby set aside and the matter is remitted to the Special Court for fresh disposal. The costs shall abide the eventual result of the L.G.C. before the Special Court.

T. CH. SURYA RAO, J

Date: 23-11-2006

G. CHANDRAIAH, J

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[1] AIR 1993 SC 2465